IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3051 OF 2005

Burhan Fattu Sayyed ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.S.G.Rajput for the Applicant
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 10,2005.

P.C.:

1. Heard learned Counsel appearing for the parties. An offence has been registered against the Applicant punishable under Section 302 of Indian Penal Code at Antop Hill Police Station, Mumbai. The case of the prosecution is that the deceased was carrying on business of selling sugar-cane. On 3rd December 2004, the Applicant had altercation with the deceased and the Applicant took one sugar-cane from the deceased and assaulted the deceased on the legs, back and on the head. F.I.R. was filed on 14th December 2004 by the daughter of the deceased. In the F.I.R. itself it is stated that the wife of the Applicant came forward and volunteered to get the deceased treated from a Doctor. The case made out in the F.I.R. is that on 4th December 2004 the wife of the Applicant took the deceased to Dr.Shamim Ahmed for treatment. Prior to that she took the deceased to one Dr.Thakkar for treatment. In the F.I.R. it is stated that the prior to filing of the F.I.R., the deceased started chest pain and pain

in the legs. The deceased died in the hospital on 20th December 2004. The Application made by the Applicant before the Sessions Judge has been rejected.

2. The learned Counsel for the Applicant submitted that the entire prosecution case is inconsistent and Section 302 of I.P.C. cannot apply. He has taken me through the various statements of the witnesses and other documents on record including P.M.Notes. He pointed out that the charge sheet has been filed.

3. The learned A.P.P. has opposed this Application by pointing out that the subsequent statements of Dr. Thakkar which shows that the Applicant assaulted the deceased on the head. She pointed out that the cause of death was that the head injury suffered by the deceased. The learned A.P.P. does not dispute that charge sheet has been filed.

4. I have considered the rival submissions. Even according to the case of the prosecution, though the incident of assault had taken place on 3rd December 2004, the deceased did not file any complaint. On the contrary the case is that F.I.R. was filed by the daughter of the deceased on 14th December 2004. Even according to the case of the prosecution the wife of the Applicant initially took the deceased to Dr. Thakkar on 3rd December 2004 for treatment. In the first statement of Dr.Thakkar there is no reference to any injury to the head.

In the subsequent statement, Dr.Thakkar has stated that the assault was made by the Applicant on the head, on the back and on the legs of the deceased. The wife of the Applicant took the deceased to Dr.Shamim Ahmed. Dr.Shamim has also stated that the injury was to left leg of the deceased. The P.M.notes disclose that the deceased did not suffer from any fracture and there were no external injuries. The cause of death mentioned is, "head injury in a case of assault". It is pertinent to note that the daughter of the deceased has stated in her complaint that the deceased was intoxicated to liquor and for a period of three days prior to 14th December 2004 the deceased was suffering from chest pain.

5. On plain reading of the material produced by the prosecution, a case is made out for grant of bail. As stated earlier investigation has been completed and the charge sheet has been filed. Any criminal antecedents of the Applicant are not brought on record.

6. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in C.R.No.271 of 2003 registered with Antop Hill Police Station, Mumbai subject to the Applicant filing P.R.Bond in the sum of Rs.10,000/- (Rupees ten thousand only) with one or two local sureties in the like amount.

ii) The bail is granted subject to the condition that the Applicant will remain present on all dates which are fixed for hearing before the Sessions Judge and will cooperate with the learned Judge for early disposal of the trial. In case the learned Sessions Judge finds that the trial is delayed on account of the Applicant, the learned Judge will make entry to that effect in the Roznama of the proceeding and it may be a ground for cancellation of the bail.

iii) The Applicant shall not make any attempt either directly or indirectly to influence or pressurise the prosecution witnesses and shall not tamper with the evidence in any manner.

iv) Application is disposed of in above terms.

v) Parties to act upon an authenticated copy of this order.

JUDGE